

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MARK MAYES,

Plaintiff,

v.

INTERNATIONAL MARKETS LIVE et  
al,

Defendants.

CASE NO. 2:22-cv-01269-TL

ORDER ON MOTION TO COMPEL  
ARBITRATION AND DISMISS,  
MOTION FOR SUMMARY  
JUDGMENT, MOTION FOR  
SANCTIONS, AND MOTION FOR  
EXTENSION

This matter comes before the Court on Defendants' Motion to Compel Arbitration and Dismiss (Dkt. No. 35), Plaintiff's Motion for Summary Judgment (Dkt. No. 58), Plaintiff's Motion for Sanctions (Dkt. No. 61), and Plaintiff's Motion for Extension of Time to Add Exhibits (Dkt. No. 78). Having considered the relevant record and governing law, the Court GRANTS in part and DENIES in part the Motion to Compel Arbitration, DENIES Defendants' motion to dismiss, STRIKES Plaintiff's Motion for Summary Judgment, DENIES both Parties' requests for sanctions, and GRANTS the Motion for Extension.

1 This action arises out of Plaintiff Mark Mayes’ allegations that Defendants International  
2 Markets Live, Inc. (“IML”) and its CEOs Isis De La Torre and Christopher Terry engaged in a  
3 pyramid scheme to provide poor, fraudulent, or deceptive advice and other tools related to forex  
4 trading, among other allegations of misconduct. Dkt. No. 12 at 2, 7–12 (amended complaint).  
5 Plaintiff seeks monetary damages and injunctive relief. *Id.* at 12. Plaintiff is proceeding *pro se*  
6 (without an attorney).

## 7 I. BACKGROUND

8 IML provides online educational products regarding markets, include trading foreign  
9 currency. Dkt. No. 35 at 1. The Parties dispute exactly when Plaintiff became an IML customer;  
10 Plaintiff alleges he joined IML “around 2019” (Dkt. No. 12 at 7), while Defendants claim he  
11 joined on July 2, 2020 (Dkt. No. 35 at 1–2; Dkt. No. 73 at 1).

12 The Court previously struck extraneous filings by Plaintiff (Dkt. Nos. 39, 42, 44, 45, 46,  
13 50, 51) due to violations of the Local Civil Rules. *See* Dkt. No. 52. The Court next struck  
14 Plaintiff’s improper surreply to the motion to compel arbitration. *See* Dkt. Nos. 55, 56. The Court  
15 then entered a stay, instructing that “[a]ny motion, brief, declaration, or other filing that are  
16 submitted while the case is stayed may be summarily denied or stricken.” Dkt. No. 69 at 2. On  
17 October 19, 2023, while the stay was in effect, Plaintiff filed a motion seeking to submit  
18 additional exhibits and submitted a flash drive containing videos and photos. Dkt. Nos. 78, 79.

## 19 II. LEGAL STANDARDS

### 20 A. Motion to Compel Arbitration

21 The Federal Arbitration Act (“FAA”), 9 U.S.C. § 2 *et seq.*, governs arbitration  
22 agreements in most contracts affecting interstate commerce. *See Circuit City Stores, Inc. v.*  
23 *Adams*, 532 U.S. 105, 119 (2001) (holding that only contracts of employment of transportation  
24 workers are exempt). District courts have jurisdiction to determine whether there is an agreement

1 to arbitrate a particular issue “unless the parties clearly and unmistakably provide otherwise.” *In*  
 2 *re Van Dusen*, 654 F.3d 838, 843 (9th Cir. 2011). In deciding whether to compel arbitration, a  
 3 court's inquiry is generally limited to two “gateway” issues: “(1) whether a valid agreement to  
 4 arbitrate exists and, if it does, (2) whether the agreement encompasses the dispute at issue.”  
 5 *Chiron Corp. v. Ortho Diagnostic Sys., Inc.*, 207 F.3d 1126, 1130 (9th Cir. 2000). If both  
 6 conditions are met, “the [FAA] requires the court to enforce the arbitration agreement in  
 7 accordance with its terms.” *Id.* Arbitration agreements “shall be valid, irrevocable, and  
 8 enforceable” in the absence of legal or equitable grounds such as fraud, duress, or  
 9 unconscionability. 9 U.S.C. § 2; *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 339 (2011)  
 10 (internal citations omitted). Where “[t]he crux of the complaint is that the contract as a whole  
 11 (including its arbitration provision) is . . . invalid,” even the validity of the contract becomes a  
 12 question for the arbitrator to decide. *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440,  
 13 444–46 (2006).

14 A motion to compel arbitration “is in effect a summary disposition of the issue of  
 15 whether or not there had been a meeting of the minds on the agreement to arbitrate,” so, courts  
 16 apply the summary judgment standard when evaluating such a motion. *Hansen v. LMB Mortg.*  
 17 *Serv., Inc.*, 1 F.4th 667, 670 (9th Cir. 2021). Thus, any doubt is resolved in favor of the non-  
 18 moving party.

## 19 **B. Stay or Dismissal of Actions in Arbitration**

20 Generally, the FAA requires a stay of trial court proceedings upon request by one of the  
 21 parties while arbitration is pending. 9 U.S.C. § 3. “[N]otwithstanding the language of § 3, a  
 22 district court may either stay the action or dismiss it outright when . . . the court determines that  
 23 all of the claims raised in the action are subject to arbitration.” *Johnmohammadi v.*  
 24 *Bloomington’s, Inc.*, 755 F.3d 1072, 1074 (9th Cir. 2014) (citing *Sparling v. Hoffman Constr.*

1 *Co., Inc.*, 864 F.2d 635, 638 (9th Cir. 1988)); *see also Forrest v. Spizzirri*, 62 F.4th 1201  
 2 at 1204–06 (9th Cir. 2023) (finding that recent Supreme Court case law does not abrogate  
 3 *Johnmohammadi*).

#### 4 **C. The Court’s Authority to Manage its Docket**

5 The Supreme Court has repeatedly recognized district courts’ “inherent authority to  
 6 manage their dockets and courtrooms with a view toward the efficient and expedient resolution  
 7 of cases.” *Dietz v. Bouldin*, 579 U.S. 40, 47 (2016) (collecting cases). This authority includes  
 8 discretion “to manage their own affairs so as to achieve the orderly and expeditious disposition  
 9 of cases,” *G. Russell Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991), *reh’g denied*, 501 U.S.  
 10 1269 (internal quotation omitted), “the power to strike items from the docket as a sanction for  
 11 litigation conduct,” *Ready Transp., Inc. v. AAR Mfg., Inc.*, 627 F.3d 402, 404 (9th Cir. 2010)  
 12 (collecting cases), and to otherwise sanction misconduct, *id.* at 405.

### 13 **III. ANALYSIS**

#### 14 **A. The Court Declines to Consider Non-Responsive Aspects of the Parties’ Filings**

15 Pursuant to its inherent power to manage its docket, the Court declines to consider certain  
 16 unresponsive portions of the submissions filed by both Parties following its September 25, 2023,  
 17 Order to Show Cause. The Order to Show Cause explicitly stated that all responses must be  
 18 “*strictly limited* to addressing the existence of an arbitration agreement and its contents during  
 19 the Parties’ relationship.” Dkt. No. 72 at 2 (emphasis in original). A prior Order had also warned  
 20 Plaintiff that “any future filings that are not previously authorized by the Court, [would not be  
 21 entertained] in considering Defendants’ pending motion to dismiss and compel arbitration.” Dkt.  
 22 No. 56 at 2.

23 Defendants’ briefing raised arguments going to the merits of the case which are irrelevant  
 24 to whether to compel arbitration. *See* Dkt. No. 73 at 2–3. These arguments could have been

1 appropriate in resolving the motion to dismiss but were not raised in the original motion. *See*  
2 Dkt. No. 35. It is unacceptable legal practice to present new argument at this stage. *See, e.g.,*  
3 *AMA Multimedia, LLC v. Wanat*, 970 F.3d 1201, 1214–15 (9th Cir. 2020) (declining to consider  
4 new arguments raised for the first time in response to an order for supplemental briefing).

5 Both Parties had to file corrections to their initial responses to the Order to Show Cause.  
6 *See* Dkt. Nos. 74, 75, 76, 77. Plaintiff’s second response to the Order to Show Cause appears to  
7 be an attempted praecipe (correction) filed on the same day as his first response, in order to  
8 attach evidence for the Court to consider. *See* Dkt. No. 77 at 4–5 (appending hyperlinks and  
9 photos to his previous filing with the explanation “Note: These are links to the exhibits as I’m  
10 not able to submit them on the docket.”). That same day, Plaintiff then filed the Motion for  
11 Extension of Time to Add Exhibits in which he requested additional time to mail a thumb drive  
12 containing the exhibits he had attempted to include in his most recent filing. Dkt. No. 78. The  
13 Court received the thumb drive on October 19, 2023, and it contained the same exhibits he had  
14 already included as hyperlinks and photos in his earlier filing. *See* Dkt. Nos. 77, 79. Only one of  
15 the exhibits contained in these filings is responsive to the Order to Show Cause; the others go to  
16 the merits of his underlying claims. The one responsive exhibit is Exhibit 6, a screenshot with his  
17 emails grouped from “IMofficial.” Dkt. No. 77 at 5 (“Receipt Screenshot”). The earliest of the  
18 emails has the subject line “Receipt for your Payment (Ref# 270700518)” and is dated October  
19 30, 2020. *Id.* While the receipt does not specify what the payment is for, it says it is for an order  
20 from International Markets Live, Ltd., in the amount of \$274.95. *Id.* On the thumb drive  
21 submission, Plaintiff has labeled this image as “6IMLdate I joined,” and his written submission  
22 indicates that this was filed to show that his association with IML began before 2021. Dkt. No.  
23 77 at 5.

1 The Court therefore GRANTS Plaintiff's Motion for Extension of Time to Add Exhibits  
 2 (Dkt. No. 78) even though it disregards most of the exhibits contained in his subsequent physical  
 3 filing as well as in his corrected response to the Order to Show Cause. *See* Dkt. Nos. 77, 79. For  
 4 clarity's sake, in issuing this Order, the Court considers Plaintiff's response to the Order to Show  
 5 Cause at Dkt. No. 77 and the Receipt Screenshot at page 5 of Dkt. No. 77.

6 **B. Some, Though Not All, of Plaintiff's Claims are Subject to Mandatory Arbitration**

7 An agreement to arbitrate exists in this case. The FAA applies because interstate  
 8 commerce is involved, as IML is a provider of educational services across state lines. Dkt.  
 9 No. 35 at 10–11. Defendants explain that to access the content of the IML website about which  
 10 Plaintiff complains, he would have needed to sign terms and conditions, which included—for at  
 11 least part of the relevant timeframe, as addressed below—a mandatory arbitration provision. Dkt.  
 12 No. 35 at 2; Dkt. No. 75 ¶ 10. Though at one point Plaintiff flatly denies having signed such an  
 13 agreement (*see* Dkt. No. 77 at 2), a blanket denial is insufficient to controvert this fact, as “the  
 14 party resisting arbitration bears the burden of proving that the claims at issue are unsuitable for  
 15 arbitration.” *Green Tree Fin. Corp. v. Randolph*, 531 U.S. 79, 91–92 (2000). Indeed, “[i]f the  
 16 party seeking arbitration has substantiated the entitlement by a showing of evidentiary facts, the  
 17 party opposing may not rest on a denial but must submit evidentiary facts showing that there is a  
 18 dispute of fact to be tried.” *Grabowski v. Robinson*, 817 F.Supp.2d 1159, 1168 (S.D. Cal. 2011)  
 19 (quoting *Oppenheimer & Co., Inc. v. Neidhardt*, 56 F.3d 352, 358 (2nd Cir. 1995)).

20 The Parties disagree on the date Plaintiff became a subscriber of IML. Mr. Mayes asserts  
 21 that he became a customer of IML “around 2019 until [A]ugust of 2022.” Dkt. No. 12 at 7.  
 22 Based upon the information currently in the record, Plaintiff signed user agreements with IML  
 23  
 24

1 on July 2, 2020, December 19, 2020, October 18, 2021, and July 1, 2022.<sup>1</sup> Dkt. No. 75 ¶ 10. It  
2 appears that Mr. Mayes paid for subscriptions on July 2, 2020, December 19, 2020, October 18,  
3 2021, and July 1, 2022. Dkt. No. 35 at 2. Defendants assert that each time Mr. Mayes became a  
4 subscriber, he would have had to check a box to confirm he had completely read and fully agreed  
5 to the revised terms and conditions. Dkt. No. 73 at 2; Dkt. No. 75 ¶ 9.

6 Defendants assert that the January 15, 2021, Terms and Conditions document (“Original  
7 Terms and Conditions”) was in place from “sometime in 2018” until June 4, 2021. Dkt. No. 73  
8 at 2; Dkt. No. 75 ¶ 4. However, the Dispute Provision (Paragraph 11.11) of the Original Terms  
9 and Conditions only applied to Independent Affiliates. Dkt. No. 73 at 2. Defendants admit that as  
10 Mr. Mayes first joined IML as a subscriber and not an Independent Affiliate, the Dispute  
11 Provision of the Original Terms and Conditions “does not seem to apply to Mr. Mayes.” *Id.*  
12 Neither of the agreements he signed on July 2, 2020, or December 19, 2020, required him (as a  
13 non-Independent Affiliate) to submit to mandatory arbitration for claims against IML. *Id.*  
14 Therefore, Plaintiff’s claims as an IML subscriber arising before June 2021 are not subject to  
15 mandatory arbitration. *Id.*

16 IML introduced a mandatory arbitration provision in its agreements with subscribers (as  
17 opposed to Independent Affiliates) beginning on June 5, 2021. Dkt. No. 73 at 4, Dkt. No. 75  
18 ¶ 10. Plaintiff signed the updated agreements containing this mandatory arbitration clause on  
19 October 18, 2021, and again on July 1, 2022. Dkt. No. 73 at 4; Dkt. No. 75 ¶ 10.<sup>2</sup> Looking to the  
20  
21

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22 <sup>1</sup> The only evidence Mr. Mayes has submitted to date regarding when he became an IML customer is the Receipt  
23 Screenshot discussed in Part III.A of this Order, which is a payment receipt for something Plaintiff purchased from  
IML that does not specify the payment’s purpose (whether for a membership subscription or otherwise).

24 <sup>2</sup> Defendants’ briefing contains a typo, but it is clear from multiple places in their most recent filings that the  
relevant date on which Plaintiff first signed agreements required mandatory arbitration was October 18, 2021.

1 agreements Plaintiff signed that *do* require mandatory arbitration, the relevant provision provides  
 2 in full as follows:

3 **Disputes & Arbitration; Applicable Law.**

4 PLEASE READ THIS SECTION CAREFULLY. IT MAY SIGNIFICANTLY AFFECT  
 5 YOUR LEGAL RIGHTS, INCLUDING YOUR RIGHT TO FILE A LAWSUIT IN COURT.

6 Using or accessing the Site and/or enrolling as Member constitutes your  
 7 acceptance of this Arbitration provision. Please read it carefully as it  
 8 provides that you and we will waive any right to file a lawsuit in court or  
 9 participate in a class action for matters within the terms of the Arbitration  
 10 provision. We welcome you to contact Customer Service regarding issues  
 11 or concerns you may have. This arbitration agreement does not in any way  
 12 alter your ability to bring concerns to the attention of Customer Service at  
 13 support@im.academy.

14 *A. Class Action Waiver and Agreement to Arbitrate.*

15 EXCEPT FOR DISPUTES THAT QUALIFY FOR SMALL CLAIMS COURT, ALL  
 16 DISPUTES ARISING OUT OF OR RELATED TO THESE TERMS OF USE OR ANY  
 17 ASPECT OF THE RELATIONSHIP BETWEEN YOU AND IM WHETHER BASED IN  
 18 CONTRACT, TORT, STATUTE, FRAUD, MISREPRESENTATION, OR ANY OTHER  
 19 LEGAL THEORY, WILL BE RESOLVED THROUGH FINAL AND BINDING  
 20 ARBITRATION BEFORE A NEUTRAL ARBITRATOR INSTEAD OF IN A COURT BY  
 21 A JUDGE OR JURY, AND YOU AGREE THAT IM AND YOU ARE EACH WAIVING  
 22 THE RIGHT TO SUE IN COURT AND TO HAVE A TRIAL BY A JURY. YOU AGREE  
 23 THAT ANY ARBITRATION WILL TAKE PLACE ON AN INDIVIDUAL BASIS; CLASS  
 24 ARBITRATIONS AND CLASS ACTIONS ARE NOT PERMITTED AND YOU ARE  
 AGREEING TO GIVE UP THE ABILITY TO PARTICIPATE IN A CLASS ACTION.

*B. Arbitration Process and Procedure.*

The arbitration will be administered by Judicial Arbitration Mediation  
 Services, Inc. ("JAMS") pursuant to the JAMS Streamlined Arbitration  
 Rules & Procedures effective July 1, 2014 (the "JAMS Rules") and as  
 modified by this agreement to arbitrate. The JAMS Rules, including  
 instructions for bringing arbitration, are available on the JAMS website at  
<http://www.jamsadr.com/rules-streamlined-arbitration>. The Minimum  
 Standards are available at [https://www.jamsadr.com/consumer-minimum-](https://www.jamsadr.com/consumer-minimum-standards)  
[standards](https://www.jamsadr.com/consumer-minimum-standards). The arbitrator will conduct hearings, if any, by teleconference  
 or videoconference, rather than by personal appearances, unless the  
 arbitrator determines upon request by you or by us that an in-person  
 hearing is appropriate. Any in-person appearances will be held at a  
 location which is reasonably convenient to both parties with due  
 consideration of their ability to travel and other pertinent circumstances. If



the parties are unable to agree on a location, such determination should be made by JAMS or by the arbitrator. The arbitrator's decision will follow the terms of these terms and conditions and will be final and binding. The arbitrator will have authority to award temporary, interim, or permanent injunctive relief or relief providing for specific performance of these terms and conditions, but only to the extent necessary to provide relief warranted by the individual claim before the arbitrator. The award rendered by the arbitrator may be confirmed and enforced in any court having jurisdiction thereof. Notwithstanding any of the foregoing, nothing in these terms and conditions will preclude you from bringing issues to the attention of federal, state, or local agencies and, if the law allows, they can seek relief against us for you.

*C. Applicable Law.*

These terms and conditions will be governed by and construed under the laws of the United States (including federal arbitration law) and the State of Nevada without regard to conflicts of law principles.

Dkt. No. 75 at 22.

The Court thus finds that for the time period Mr. Mayes subscribed to IML between October 18, 2021, until August 2022,<sup>3</sup> a mandatory arbitration agreement was in place between the Parties. This agreement encompasses the entire dispute during that timeframe because the alleged amount in controversy exceeds what may be considered by a small claims court (*see* Dkt. No. 12 at 12), and Plaintiff's claims under Washington law are covered under the arbitration provision's explicit terms. *See* Dkt. No. 75 at 22 (the arbitration provision at issue covers "ALL DISPUTES ARISING OUT OF OR RELATED TO THESE TERMS OF USE OR ANY ASPECT OF THE RELATIONSHIP BETWEEN [Plaintiff] AND IM").

Plaintiff argues that "[i]n the event that [he] did sign" an arbitration provision, that his contract with IML is invalid due to procedural and substantial unconscionability. Dkt. No. 77 at 2. When a party challenges the validity of an entire agreement, the arbitrator has "exclusive

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<sup>3</sup> Plaintiff was an IML customer until August 2022. Dkt. No. 12 at 1. He last paid for an IML subscription on July 1, 2022, and that subscription lasted one month. Dkt. No. 35 at 2. He last logged into his IML account on August 7, 2022. *Id.* at 4.

1 authority to decide whether the [a]greement is enforceable.” *Rent-A-Center, West, Inc. v.*  
2 *Jackson*, 561 U.S. 63, 66 (2010). “However, when a plaintiff argues that an arbitration clause,  
3 standing alone, is unenforceable—for reasons independent of any reasons the remainder of the  
4 contract might be invalid—that is a question to be decided by the court.” *Bridge Fund Cap.*  
5 *Corp. v. Fastbucks Franchise Corp.*, 622 F.3d 996, 1000 (9th Cir. 2010) (internal citation  
6 omitted). *Bridge Fund* counsels that when a challenge to an arbitration clause’s validity “is an  
7 entirely distinct issue from the contract claims in the case,” courts should look beyond the  
8 complaint to the briefing resisting a motion to compel arbitration “to determine if Plaintiffs’  
9 objections to the arbitration clause are severable from Plaintiffs’ challenge to the validity of  
10 the . . . agreement as a whole.” *Id.* at 1002.

11 Here, Plaintiff makes no mention of the arbitration agreement in his complaint. *See* Dkt.  
12 No. 12. Therefore, the Court looks to his response brief to the motion to compel arbitration, but  
13 his brief focuses on allegations that IML breached the Washington Consumer Protection Act and  
14 not on the arbitration clause standing alone. *See* Dkt. No. 53. Plaintiff’s dispute regarding the  
15 validity of the arbitration provision is framed as follows: “**Considering the ethical and legal**  
16 **violations committed by IML, as outlined in the applicable statutes**, any alleged arbitration  
17 agreement associated with the company is null and void.” *Id.* at 3 (emphasis added). Plaintiff  
18 elaborates on this argument in his response to the Court’s Order to Show Cause, explaining that  
19 he raises unconscionability challenges to the arbitration agreement because “there exist legal  
20 reasons to invalidate **the contract as a whole**.” Dkt. No. 77 at 2 (emphasis added). His briefing  
21 clearly challenges the contract as a whole, rather than the arbitration provision specifically.  
22 Because Plaintiff’s arguments regarding the validity of the arbitration agreement are inseparable  
23 from his arguments regarding the validity of his contract with IML as a whole, they must be  
24 reviewed by the arbitrator, rather than the Court.

1 Therefore, without ruling on whether the arbitration provision is valid, the Court  
2 COMPELS ARBITRATION of Plaintiff's post-October 18, 2021, claims in accordance with the terms  
3 of that agreement.

4 **C. Dismissal is Not Warranted in this Case**

5 A portion of Plaintiff's claims (those arising *before* he signed the arbitration provision on  
6 October 18, 2021) are not subject to arbitration. The Supreme Court has affirmed that "even if it  
7 leads to piecemeal litigation . . . federal courts must examine with care the complaints seeking  
8 to invoke their jurisdiction in order to separate arbitrable from nonarbitrable claims." *KPMG*  
9 *LLP v. Cocchi*, 565 U.S. 18, 19 (2011) (citing *Dean Witter Reynolds Inc. v. Byrd*, 470 U.S. 213,  
10 217 (1985) ("the [Federal] Arbitration Act requires district courts to compel arbitration of  
11 pendent arbitrable claims when one of the parties files a motion to compel, even where the result  
12 would be the possibly inefficient maintenance of separate proceedings in different forums")).  
13 The Court thus DENIES Defendants' motion to dismiss.

14 **D. Plaintiff's Motion for Partial Summary Judgment is Premature**

15 Plaintiff seeks summary judgment "on the issue of the defendant's operation of an illegal  
16 pyramid promotional scheme under Chapter 19.275 RCW." Dkt. No. 58 at 2. This issue will be  
17 decided by an arbitrator with respect to Plaintiff's arbitrable claims. Regarding the nonarbitrable  
18 claims, it is inappropriate to entertain a motion for summary judgment at this early stage of the  
19 case. *See, e.g., Tex. Partners v. Conrock Co.*, 685 F.2d 1116, 1119 (9th Cir. 1982), *cert. denied*,  
20 460 U.S. 1029 (1983) (holding that district court abused its discretion in granting summary  
21 judgment without providing discovery); *Encinas v. Univ. of Wash.*, C20-1679, 2022 WL  
22 4598083 at \*8 (W.D. Wash. 2022) (explaining that "motions for summary judgment are  
23 frequently considered premature and denied when discovery has not been completed" (internal  
24

1 citations omitted)). For purposes of judicial efficiency, the Court STRIKES the motion as  
2 premature without prejudice to re-filing at a later stage if still appropriate.

3 **E. The Court Declines to Issue Sanctions**

4 The Court may issue sanctions in response to litigation misconduct by an attorney or  
5 unrepresented party. Under the Federal Rules of Civil Procedure, sanctions may be sought when  
6 court filings are presented for an improper purpose, lack evidentiary support, or include frivolous  
7 legal contentions. Fed. R. Civ. P. 11(b), (c).

8 In the present case, Plaintiff seeks sanctions against Defendants based on multiple alleged  
9 violations: (1) their deceptive misrepresentation of his status as not an “Independent Business  
10 Owner” with IML; (2) their “deliberate and calculated distortion of the elemental aspects of a  
11 pyramid scheme;” and (3) their “meticulous[] endeavor[s] to mask the inherent characteristics of  
12 a pyramid scheme as employed by IM Academy.” Dkt. No. 61 at 4–5. In response, Defendants  
13 likewise seek sanctions against Plaintiff due to the numerosity and alleged frivolity of his filings.  
14 Dkt. No. 63 at 7–8.

15 The Court finds that Defendants are unlikely to have misrepresented Plaintiff’s  
16 subscription status with IML, and Plaintiff has provided no explanation for why his status as a  
17 “subscriber” rather than an “Independent Business Owner” would substantively impact his legal  
18 claims. *See* Dkt. No. 61 at 2. Like regular subscribers, Independent Business Owners are only  
19 given access to IML’s web content once IML has approved the individual’s executed  
20 agreements, which are the same for both types of customers. *See* Dkt. No. 35 at 3. Additionally,  
21 the Court finds that Defendants have not misrepresented the legal elements of a pyramid scheme  
22 under Washington law, which defines a pyramid scheme as “any plan or operation in which a  
23 person gives consideration for the right or opportunity to receive compensation that is derived  
24 primarily from the recruitment of other persons as participants in the plan or operation, rather

1 than from the bona fide sale of goods, services, or intangible property to a person or by persons  
2 to others.” RCW 19.275.020(4). Defendants used this definition in their briefing and accurately  
3 summarized the elements of a pyramid scheme from this definition. *See* Dkt. No. 59 at 6.  
4 Similarly, the Court finds there is no evidence that Defendants have misrepresented the  
5 underlying facts of the case.

6 Meanwhile, though Plaintiff’s unauthorized filings to date have been a burden on  
7 opposing counsel as well as the Court (*see, e.g.*, Dkt. No. 52 at 2–3), the Court declines to  
8 sanction the *pro se* litigant who is earnestly and vigorously prosecuting his case at this early  
9 stage in the proceedings. Both Parties’ requests for sanctions are therefore DENIED. This is  
10 Plaintiff’s third notice that his conduct has been out of compliance with the Local Civil Rules  
11 and the Federal Rules of Civil Procedure. *See* Dkt. Nos. 52 and 56. Further use of litigation  
12 tactics that appear to be for the purpose of harassment and filing of additional procedurally  
13 deficient motions or unauthorized filings may be grounds for issuance of sanctions.

#### 14 IV. CONCLUSION

15 For the reasons set forth above, the Court ORDERS the following:

- 16 1. Defendants’ Motion to Compel Arbitration and Dismiss (Dkt. No. 35) is GRANTED in  
17 part and DENIED in part. The Parties are ORDERED to proceed with arbitration in  
18 accordance with their agreement on Plaintiff’s claims for the period beginning  
19 October 18, 2021, through the remainder of his time as an IML subscriber.
- 20 2. Plaintiff’s Motion for Summary Judgment (Dkt. No. 58) is STRICKEN.
- 21 3. Plaintiff’s Motion for Sanctions (Dkt. No. 61) is DENIED, as is Defendants’ request for  
22 sanctions contained in their responsive briefing.
- 23 4. Plaintiff’s first attempted response to the Order to Show Cause (Dkt. No. 76) is  
24 STRICKEN.

- 1 5. Plaintiff's Request for Extension of Time to Add Exhibits (Dkt. No. 78) is GRANTED.
- 2 6. The Parties are ORDERED to file a joint status report **no more than ninety (90) days**
- 3 **from the date of this Order** and **every ninety (90) days thereafter** informing the
- 4 Court of the status of Mr. Mayes' claims against Defendants for the time period Mr.
- 5 Mayes subscribed to IML between October 18, 2021, until August 2022. The Parties
- 6 are further DIRECTED to file a joint status report informing the Court of the following
- 7 developments **within seven (7) days of their occurrence**: (i) if the claims sent to
- 8 arbitration are resolved, (ii) if the Parties reach a settlement on any claims, or (iii) if
- 9 there is any other significant change in the status of this case. Any other motions or
- 10 filings may be summarily stricken.

11

12 Dated this 2nd day of November 2023.

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Tana Lin  
15 United States District Judge

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